

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

CASE NO. 03-CR-90022

05-CV-72492-DT

HON. MARIANNE O. BATTANI

NUO NUCULOVIC,

Defendant/Movant.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND DENYING DEFENDANT/MOVANT'S MOTION TO VACATE, SET ASIDE, OR
CORRECT HIS SENTENCE PURSUANT TO 28 U.S.C. § 2255**

Defendant/Movant Nuo Nuculovic was convicted in this Court on September 23, 2003, pursuant to his guilty plea for possession with intent to distribute marijuana. On April 29, 2004, Nuculovic was sentenced to a term of forty-eight months' incarceration. The sentence was below the applicable guideline range. He did not appeal his conviction or sentence. On June 15, 2005, Nuculovic, through counsel, filed this motion to vacate his sentence under 28 U.S.C. § 2255, challenging the constitutionality of his sentence, in light of the recent United States Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005).

On November 21, 2005, Magistrate Judge Paul J. Komives issued a Report and Recommendation (R & R) denying the relief sought. Nuculovic has filed no objections to Magistrate

Judge Komives' Report and Recommendation and has thereby waived his right to object to the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1 (d)(2).

Accordingly, this Court adopts Magistrate Judge Komives' Report and Recommendation in its entirety, and **DENIES** defendant/movant's motion to vacate, set aside, or correct his sentence.

IT IS SO ORDERED.

DATE: December 16, 2005

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

Proof of Service

Copies of this order were served upon Bruce Judge, and Neil Rockind on this date by ordinary mail and/or e-filing.

s/Bernadette M. Thebolt
Case Manager